



Sales Tax Guidelines for Horticultural Specialty Trades

**Nurseries, Florists,
Landscapers & related industries**

Utah State Tax Commission

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Sales Tax – In General

Sales tax is a tax on the rental or retail sale of all tangible personal property sold, admissions and users fees, and certain services performed within Utah. Sales tax is collected from the purchaser and it is remitted by the vendor (or seller) to the Utah State Tax Commission ("Tax Commission") on monthly, quarterly or annual tax returns.

Sales Tax Rate

The sales tax rate is based on the place of business in Utah where the merchandise or service is sold (point of sale). The current statewide sales tax rate is combined with any additional local sales taxes imposed by cities and counties. Therefore, the sales tax rate may vary from one community to the next. Contact the Tax Commission for information about the sales tax rate that applies to your sales.

Sales Tax License

All vendors who are required to collect sales tax must have a sales tax license issued by the Tax Commission. Applications for sales tax licenses (Tax Commission form TC-69) are available from the Tax Commission. When completing an application, be sure to include the proper name of the business and the name of the person who is authorized to file and pay returns. LLCs, corporations and partnerships must also include the names, addresses and social security numbers of all members, officers or partners. The sales tax license information must be updated whenever this information changes.

Once a license has been issued, preprinted personalized returns will be mailed approximately four weeks before the return is due. However, if returns are not received, you are responsible for obtaining blank return forms and filing by the due date, even if no tax is due for the period.

Sales tax licenses are not transferable.

Filing Requirements

The Tax Commission determines filing periods. If your sales tax liability is less than \$1,000 per year, you may file tax returns annually. If your sales tax liability is up to \$50,000 per year, you must file quarterly. If your sales tax liability is more than \$50,000 per year, the Tax Commission will notify you to file monthly. If your sales tax liability is \$96,000 or more per year, you will be notified to file tax returns monthly and you will be required to remit by Electronic Funds Transfer (EFT). The EFT must be completed before 3:00 p.m. on the last day of the month succeeding the month of the sales. Returns are due on the last day of the month following the end of the filing period.

A tax return must be filed whether or not tax is due for a particular period. Tax records are subject to audit by the Tax Commission.

Persons, other than state entities, who file and pay monthly returns on time are entitled to a vendor discount equal to 1.5 percent of the state tax, 1 percent of the local tax, and 1 percent of the mass transit, highways taxes, or combined public transit taxes. A work sheet for calculating the vendor discount is provided with the return.

Penalties

The penalty for failure to file a tax due return by the due date is the greater of \$20 or 10 percent of the unpaid tax. Additionally, a second penalty, the greater of \$20 or 10 percent of the tax balance will be charged if a tax balance remains unpaid 90 days after the due date. The penalty for failure to pay timely as reported on a timely filed return or within 30 days of a notice of deficiency is the greater of \$20 or 10 percent of the tax due.

If returns are filed late or if taxes are not paid in full when due, the vendor discount described above will not apply.

Sellers making exempt sales to farmers and agricultural producers under the exemption for sales of tangible personal property used or consumed primarily and directly in commercial farming operations must report such sales on the appropriate informational line of their returns. Failure to comply with this reporting requirement may subject the seller to a penalty. The penalty imposed shall be the lesser of \$1,000.00 or 10 percent of the sales tax that would have been imposed if the exemption had not applied.

Sales Tax Exemptions

Utah law provides certain sales tax exemptions that pertain to purchases or sales by agricultural producers.

Who is an Agricultural Producer?

With regard to horticultural specialty trades, an agricultural producer is one primarily engaged in the production of ornamental plants; nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds and plants; trees and sod. It also includes tree nurseries or tree farms.

What can an Agricultural Producer Purchase Tax Free?

Four kinds of sales tax exemptions bear on purchases by agricultural producers: (a) the resale exemption, (b) the agricultural exemption, (c) non-returnable containers and labels, and (d) and exemption for the

purchase of items that become a component part of a final taxable product. If a purchase does not qualify under one exemption, it may qualify under another. As a result, these exemptions work together to create a very broad opportunity for exemption on purchases.

A. Resale Exemption

Owners of nurseries, flower shops and other related businesses may purchase items for resale tax free, then collect sales tax from the retail purchaser. However, items purchased for use by the business owner in producing or storing plant material may not be purchased tax free under the resale exemption. The following example illustrates this point:

Example 1

A florist may purchase fresh flowers, vases, ribbon, and cards from a wholesale distributor tax-free for use in the flower arrangements that the florist sells to its retail customers. However, the florist must pay sales tax on the purchase of vases used to store or display the flowers in coolers until the flowers are sold at retail. In the first instance, the vase is sold to the retail customer as part of an arrangement. In the second instance, the vase is not sold to a retail customer. It is used in the operation of the business.

An exception to the resale exemption exists when the retailer sells and installs trees, shrubs, plants, sod, sprinkling systems, fencing, pavers, landscaping timbers or other items which are converted to real property upon installation. An item is considered converted to real property when it is affixed to the real estate and installed in a manner that suggests it will remain in place over the useful life of the item. When a retailer sells and installs items of this nature, the retailer is considered a real property contractor. It is the real property contractor – not the property owner – who is liable for sales tax on the purchase price of items installed because the real property contractor is the last person to own the items as tangible personal property. Examples 2 and 3 illustrate the tax liability for items that become part of a landscape.

Example 2

A homeowner hires a landscape contractor to install landscaping which includes trees, shrubs, sod, and an artificial pond. The landscaper purchases the plants and materials to create the pond from a supplier, installs them, and charges the homeowner for the total final project. Because the landscaper converts the items to real property, the landscaper must pay sales tax on his cost of the items. The amount charged by the landscaper to the homeowner is not subject to sales tax.

Example 3

A homeowner purchases plants, sod and materials for building an artificial pond. The homeowner then contracts with another party to install the items in the landscaping. In this case the homeowner is the last person to own the items as tangible personal property, and the homeowner must pay sales tax on the purchase price of these items. The installer is merely selling a non-taxable service. The charge by the installer to the homeowner is not subject to tax.

The above examples describe items that are typically converted to real property upon installation. Example 4 demonstrates that a landscape contract may include items that will not be converted to real property upon installation.

Example 4

Assume that the landscaper in Example 2 also supplied moveable benches as part of the landscape. Because the benches will not be affixed to the real property in a manner that suggests an intent to leave them in place over their useful lives, they remain tangible personal property. The landscaper is a real property contractor with regard to the plants, sod and materials used to build the pond, but he is making a taxable retail sale of the benches to the homeowner. The landscaper will pay sales tax on his purchase of the items that will be converted to real property, but he may purchase the benches tax free for resale. In billing the entire project to the homeowner, the landscaper must state the amount of tax imposed on the taxable items (the benches).

Example 5

A mall developer designs the mall facility to include a permanent indoor landscape, which includes long-term trees and shrubs. The developer contracts with a landscaper to provide and install the plants. As in Example 2 above, the landscaper is acting as a real property contractor, and the landscaper must remit the sales tax on his purchase of the landscape plants.

If the landscaper in these examples originally purchased the materials for the landscape tax free, then converted them to real property under a sell and install contract, the landscaper must report and pay sales tax on those items as goods consumed.

Incorrect Vendor Practices

A vendor that sells tangible personal property under a furnish and install contract (see examples 2 and 5) may **not**:

1. collect sales tax on that tangible personal property;
2. offset the sales and use tax the vendor owes on its own purchase of the tangible property by any sales tax the vendor inappropriately collected on the sale of that property; or
3. show the tax due on the seller/installer's purchase of construction materials (or any amount labeled as tax, computed at the current tax rate, or that otherwise appears to be tax) as a separate item on an invoice or contract provided to the customer.

A vendor that inappropriately collects sales and use tax on property sold under a furnish and install contract is required by Utah law to remit that tax to the Tax Commission, unless the tax is refunded to the purchaser.

B. Agricultural Exemption

With the exceptions mentioned below, a commercial agricultural producer may purchase or lease equipment, machinery, supplies and other tangible personal property used or consumed primarily and directly in agricultural production operations tax-free.

Examples of items that may be purchased tax-free include:

- Seed or seedlings, fertilizer, and sprays and insecticides used in the commercial production of plants to control insects, diseases or weeds. (The exemption for sprays and insecticides used to control insects, diseases, and weeds in the commercial production of agricultural produce does not extend to sprays and insecticides used in the processing of the products.).

- Materials and supplies used to construct, repair or renovate an irrigation system, greenhouse, or other agricultural building.
- Charges for labor and/or parts (including lubricating oil, antifreeze or other supplies) used to repair or maintain off-road machinery and equipment used primarily and directly in agricultural production.

Gas, electricity, heat, coal, fuel oil or other fuels used in agricultural operations to produce agricultural products for resale are not subject to sales tax. Qualifying uses include commercial greenhouses, irrigation pumps, equipment for heating orchards, off-highway farm machinery, and farming activities. The exemption extends to use for production activities up to the time of harvest or placing the product into a storage facility. If the electricity or gas for both qualifying and non-qualifying activities is delivered to a single location through a single meter, the determination of whether it qualifies for exemption depends upon whether the electricity or fuel is used predominately for qualifying activities.

The following are exceptions to this exemption, and an agricultural producer must pay sales tax when purchasing these items:

- Items purchased for use in activities that are not directly related to agricultural production (e.g., purchases of office equipment, janitorial supplies, equipment used in the sales or distribution operations, and equipment or supplies used in research or development are all taxable).
- Vehicles that are required under Utah law to be registered.
- Equipment, supplies, tools or machinery used in a manner that is merely incidental to farming.
- Hand tools with a unit price less than \$250.00.
- Storage bins and structures that are used to store previously harvested products that are held for resale.

C. Non-returnable Containers and Labels

Purchases of nonreturnable containers, labels, bags, casings or shipping cases are exempt if used in packaging the product to be sold. For example, a nurseryman may sell shrubs in one-gallon containers. The one-gallon containers are non-returnable "packaging" and the nurseryman may purchase them tax-free.

In contrast, the nurseryman may also purchase plastic trays for the purpose of starting plants from seed. At some point the seedlings are transplanted from the trays to individual pots for resale. Because the plastic trays are not used as "packaging" for the final product, the nurseryman cannot purchase them tax exempt under this exemption.

D. Component Part or Ingredient

An item of tangible personal property, which is purchased primarily as a raw material to be blended or compounded with other ingredients to make the final taxable product qualifies for exemption. If the item is purchased and consumed by the agricultural producer in the production process, it is not eligible for this exemption even if some of it becomes an incidental ingredient of the final product.

Example 6

An agricultural producer grows and hybridizes lilies for sale as bare root plants. The grower purchases seed for use in growing bulbs. The seed is a necessary ingredient or component part of the final product, and it may be purchased tax-free.

Example 7

The lily grower also purchases topsoil for the planting beds in which the lilies are grown. The topsoil is not an ingredient of the final product (the bare root plant). Instead it is used or consumed by the grower in the production process, and the grower cannot purchase it tax-free as an ingredient or component part of the final product.

As mentioned above, purchases that are excluded from one exemption may be eligible for another. For example, pesticide purchased for use on plants grown for resale is not eligible for exemption described in D above as an ingredient or component part of the final product. It is, however, eligible for the agricultural exemption described in B above. The agricultural producer may purchase an item tax free if the item or purchase fits within any one of the exemptions described.

What Can an Agricultural Producer Sell Tax-Free?

A vendor who sells items of tangible personal property must collect and remit sales tax on that sale unless the sale is exempt under one of the exemptions described in this section.

A. Sale for Resale

An agricultural producer may sell items of tangible personal property tax free if the purchaser provides the agricultural producer with a resale exemption certificate.

Example 8

A sod farm operator sells sod to a nursery for resale to its retail customers. The sale by the operator to the nursery is tax exempt under the resale exemption. The sale by the nursery to the retail customer is taxable, unless the nursery only sells seasonal produce as described in B, below.

Example 9

A sod farm operator sells sod directly to a homeowner for installation by the homeowner. This is a retail sale that does not qualify for exemption as a sale for resale, unless it fits within B, below.

B. Sale of Seasonal Produce

The exclusive sale of locally grown seasonal garden or farm crops or seedlings and plants by an agricultural producer is tax exempt if the crops or plants are sold during the harvest season. "Locally grown" includes those seasonal crops grown within the boundaries of Utah, but excludes those seasonal crops grown outside the state's boundaries.

The exemption for seasonal sales of garden, farm, or other agricultural produce is limited to **locally grown produce sold during the harvest season if only locally grown produce is sold**. If the producer sells anything other than qualifying seasonal crops, the producer is operating a retail establishment and he must collect sales tax on all of the sales.

Example 10

A farmer produces corn and sells the corn at a roadside stand during the harvest season. So long as the farmer is selling only locally grown seasonal crops through the stand, the farmer need not collect and remit sales tax on the sales. If the farmer sells any non-exempt items through the stand, he is acting like a retailer and he must collect sales tax on all retail sales, including sales of his corn.

Example 11

A nursery grows annuals for sale to the public. It also sells a full line of nursery products, including trees, shrubs, perennials, garden tools, fertilizer, insecticide, and gardening books. Although the annuals constitute a locally grown seasonal crop, the nursery is engaged in selling other items at retail. The nursery is a retailer, and it must collect and report sales tax on all of its sales, including sales of annuals.

C. Sales of Hay

All sales of hay are exempt from sales tax, regardless of whether the crop is locally grown and harvested.

D. Nontaxable Services

Example 12

A retail shop specializing in the sale of house-plants sells or leases hanging plants to a restaurant, and also sells a maintenance agreement to water, fertilize, clean and wax potted plants. Charges for this service agreement are nontaxable. The person providing the service is considered the consumer of all items used in performance of the contract. Therefore, the service operator must pay sales tax on his cost of fertilizer, replacement plants, leaf sprays, etc. Additionally, if the plants are leased and this service is included as part of that lease of the plants, the maintenance service is considered incidental to the lease and the entire lease is taxable.

Example 13

Charges for fertilizing, mowing or other yard maintenance are not taxable.